IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8516 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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LAKHDIR SAMA - Petitioner(s)
Versus
MANAGER, BOMBAY MINERAL SUPPLY CO P LTD & 1 - Respondent(s)

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Appearance :
MR PH PATHAK for Petitioner(s) : 1,
M/S TRIVEDI & GUPTA for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 29/06/2006

ORAL JUDGMENT

Heard Mr.P.H.Pathak, learned advocate on behalf of

the petitioner, learned advocate Mr.Mihir Pathak on behalf of M/s.Trivedi and Gupta for respondent no.1 and learned AGP Ms.D.S.Pandit for respondent no.2.

In the present petition, petitioner has challenged award passed by the Labour Court, Jamnagar in Reference LCD No.37 of 1990 (old Reference LCD No.78 of 1988) dated 25/5/1997. The Labour Court, Jamnagar has dismissed the reference. Jamnagar Jilla Majdur Sangh has raised industrial dispute that workman those who are working mentioned in schedule to be taken on the role of the company and to grant all the benefits which are available to the employees of the company from date of appointment with all arrears of salary as benefits. In schedule, in all thirteen workmen are mentioned in the order. They were working as a Trolley Man, Sorting, Electrician, Peon and labourer. This Court asked a question to Mr.Pathak, learned advocate for the petitioner whether these workmen are still working with the contractor or not because matter is of year 1988. The leaned advocate Mr.Pathak submitted that they were not remained with contractor and thereafter the

services were terminated by the contractor in the year 1998. Concerned workmen raised Industrial dispute before the concerned authority.

I have perused the order passed by the Labour Court, Jamnagar. The dispute raised by the petitioner objected by the employer by filing written submission raising contention that reference is not maintainable and union should have to approach under the provisions of the Contract Labour Regulation and Abolishing Act. Such type of reference is not maintainable. Both the parties have produced necessary records and both have examined their witnesses on record. Thereafter, written arguments were produced on record vide Exh.76 and 77 and then Labour Court has examined the matter. The reasoning given by the Labour Court in para 8 to 11. The labour Court has appreciated the documentary and oral evidence in detail and discussed the same by giving cogent reason in support of his conclusion. Ultimately the labour Court has come to conclusion that looking to the evidence on record, after considering the decision of the Hon'ble Supreme Court

in the case of GEB Thermal Power Station v. Hind Majdur Sabha reported in 1995 (1) CLR 967 and analyzing the criteria laid down, in light of the facts of the present case that Nakum Kanji who was Labour Contractor and contract arrived at between the principal employer and Nakum Kanji was genuine/real contract. Therefore, unless and until the Labour Court decide that labour contract was bogus or sham, the labour Court has no jurisdiction to adjudicate the dispute that these workmen were the employee of the principal employer. Therefore, ultimately, the Labour Court has come to the conclusion being a fact finding while appreciating the oral and documentary evidence and workers were working with the labour contractor therefore, the Labour Court has rejected the reference on that ground.

According to my opinion, after perusing the award in question, a detailed discussion with cogent reason given by the Labour Court, there is clear finding of fact given by the Labour Court in respect to the main issue. Therefore, according to my opinion, there is no error committed by the Labour Court which requires

interference of this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in present petition. Rule discharged. Accordingly present petition is dismissed.

However, rejection of this petition may not come in the way of the concerned workman in the Reference for challenging the termination order before the appropriate authority.

(H.K.RATHOD, J.)

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